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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
DANIEL EXCELLENT, a/k/a Daniel Thomas,

Petitioner,

- against -

THE NEW YORK CITY POLICE DEPARTMENT,  
Commissioner RAYMOND KELLY, ROBERT  
MORGENTHAU, Current Day to Day Custodian,  
and Warden MILLS MORTON of Bergen County  
Jail,

05 Civ. 7655 (DAB)  
ADOPTION OF REPORT  
AND RECOMMENDATION

Defendants.

-----X  
DEBORAH A. BATTS, United States District Judge.

This matter is before the Court upon the December 16, 2008  
Report and Recommendation of United States Magistrate Judge Henry  
Pitman. No objections to said Report and Recommendation have  
been filed.

Having reviewed the Report and Recommendation and finding no  
clear error on the face of the record, See Rule 72, Fed. R. Civ.  
P., Notes of Advisory Committee on Rules (citing Campbell v.  
United States Dist. Court, 501 F.2d 196, 206 (9th Cir.), cert.  
denied, 419 U.S. 879 (1974)), it is hereby

ORDERED AND ADJUDGED as follows:

1. The Report and Recommendation of United States  
Magistrate Judge Henry Pitman dated December 16, 2008 be and the  
same hereby is approved, adopted, and ratified by the Court;

2. Defendant's motion for dismissal of the petition due to lack of subject matter jurisdiction is GRANTED and Plaintiff's petition shall be DISMISSED;

3. The Clerk of the Court is directed to dismiss the petition and close the docket in this matter.

SO ORDERED

DATED: New York, New York  
January 16, 2009

  
DEBORAH A. BATTS  
U.S.D.J.